

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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|----------------------------------|---|---------------------|
| ROBERT MOE, |) | |
| |) | |
| Plaintiff, |) | Case No. 05-6302-HU |
| |) | |
| vs. |) | ORDER |
| |) | |
| JO ANNE B. BARNHART, |) | |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |

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KING, Judge:

The Honorable Dennis J. Hubel, United States Magistrate Judge, filed Findings and Recommendation on February 23, 2006. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). The Commissioner has filed objections to the Findings and Recommendation. Plaintiff has filed a response.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issues raised in petitioner's objections to the Findings and Recommendation, I find no error. I find plaintiff's citation to Evans v. Chater, 110 F.3d 1480 (9th Cir. 1997) to be particularly persuasive.

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Accordingly, I ADOPT Magistrate Judge Hubel's Findings and Recommendation (#9) and DENY the Commissioner's Motion to Dismiss (#4), and REMAND the case to the Commissioner for a determination of whether good cause exists for extending the time to request review, because mental incapacity prevented plaintiff from requesting timely review of the Commissioner's denial of benefits.

IT IS SO ORDERED.

Dated this 14th day of April, 2006.

/s/ Garr M. King
Garr M. King
United States District Judge